



C-560-831
Investigation
Public Document
E&C Office VII: Team

DATE: August 21, 2017

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
performing the duties of the Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Affirmative
Determination of the Countervailing Duty Investigation of
Biodiesel from the Republic of Indonesia

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and/or exporters of biodiesel from the Republic of Indonesia (Indonesia), as provided in section 703 of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

A. Initiation and Case History

On March 23, 2017, a countervailing duty (CVD) petition regarding imports of biodiesel from, *inter alia*, Indonesia was properly filed with the Department by the National Biodiesel Board Fair Trade Coalition (the petitioner), which is an *ad hoc* association composed of domestic producers of biodiesel, as well as one trade association.¹ The initial allegations, supplements to the Petition, and consultations with the Government of Indonesia (the GOI) are described in the *Initiation Notice* and accompanying Initiation Checklist.² On April 12, 2017, the Department

¹ See “Biodiesel from Argentina and Indonesia: Antidumping and Countervailing Duty Petitions,” dated March 23, 2017 (Petition).

² See *Biodiesel from Argentina and Indonesia: Initiation of Countervailing Duty Investigations*, 82 FR 18423 (April 19, 2017) (*Initiation Notice*) and accompanying Countervailing Duty Investigation Initiation Checklist (Initiation Checklist).



initiated a CVD investigation on biodiesel from Indonesia.³ On June 5, 2017, based on a request from the petitioner, the Department postponed its preliminary determination until no later than August 20, 2017.⁴

As stated in the *Initiation Notice*, we based our selection of mandatory company respondents on U.S. Customs and Border Protection (CBP) entry data for the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.⁵ The Department released the CBP entry data under administrative protective order (APO) on April 14, 2017.⁶ On April 21, 2017, we received comments on the CBP entry data from PT Musim Mas (Musim Mas), an Indonesian producer/exporter of biodiesel.⁷ We received no other comments on the CBP entry data or on our respondent selection methodology.

Section 777A(e)(1) of the Act directs the Department to determine an individual countervailable subsidy rate for each known producer/exporter of subject merchandise. The Department, however, may limit its examination to a reasonable number of producers/exporters under section 777(e)(2) of the Act and 19 CFR 351.204(c)(2) if it determines that it is not practicable to determine individual countervailable subsidy rates because of the large number of producers/exporters involved in the investigation.

After careful consideration, the Department determined that, in this investigation, it was not practicable to examine all the producers/exporters of biodiesel from Indonesia because of the large number of identified producers and exporters relative to the resources available at the Department to conduct this investigation. On May 5, 2017, based on our analysis of the CBP entry data, we selected, in alphabetical order, the two largest publicly identifiable producers/exporters, by volume, of subject merchandise exported to the United States from Indonesia during the POI as mandatory company respondents: Musim Mas and Wilmar Trading Pte. Ltd. (Wilmar Trading).⁸ On May 10, 2017, we issued the CVD questionnaire to the GOI, requesting that it forward the questionnaire to the mandatory company respondents.⁹

Between May 22, 2017, and August 9, 2017, we received timely questionnaire responses from the GOI and the respondent companies. On July 21, 2017, the petitioner timely filed benchmark

³ *Id.*

⁴ See Petitioner's Letter, "Biodiesel from Argentina and Indonesia: Request For Postponement Of The Preliminary Determinations," dated May 22, 2017; see also *Biodiesel from Argentina and Indonesia: Postponement of Preliminary Determinations of Countervailing Duty Investigations*, 82 FR 25773 (June 5, 2017) (*Postponement Notice*). Because August 20, 2017 falls on a Sunday, the preliminary determination was postponed until August 21, 2017. See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

⁵ See *Initiation Notice* at the section, "Respondent Selection."

⁶ See Memorandum, "Countervailing Duty Investigation of Biodiesel from Indonesia: Customs Entry Data for Respondent Selection," dated April 14, 2017.

⁷ See Musim Mas Letter, "Biodiesel from Indonesia: Respondent Selection Comments," dated April 21, 2017.

⁸ See Memorandum, "Countervailing Duty Investigation of Biodiesel from Indonesia: Respondent Selection," dated May 5, 2017. Hereinafter, Musim Mas and Wilmar Trading are referenced as "company respondents," "mandatory company respondents," or "respondent companies."

⁹ See Department Letter re: Countervailing Duty Questionnaire dated May 10, 2017 (Initial CVD Questionnaire).

information for calculating subsidy benefits.¹⁰ Wilmar Trading filed timely benchmark information on July 24, 2017.¹¹ On July 24, 2017, the petitioner timely filed a new subsidy allegation.¹² On July 31, 2017, Wilmar Trading timely filed rebuttal information regarding Petitioner's Benchmark Information.¹³ The petitioner filed comments in advance of this preliminary determination on August 1, 2017.¹⁴ On August 11, 2017, the GOI, Musim Mas, and Wilmar Trading submitted joint comments on the preliminary determination.¹⁵

B. Postponement of Preliminary Determination

On June 5, 2017, based on a request from the petitioner, the Department postponed the deadline for the preliminary determination to the full 130 days as permitted under section 703(c)(1)(A) of the Act, and 19 CFR 351.205(f)(1).¹⁶

C. Period of Investigation

The period of investigation for this investigation (POI) is January 1, 2016, through December 31, 2016. This period corresponds to the most recently completed calendar year in accordance with 19 CFR 351.204(b)(2).

III. SCOPE COMMENTS

As noted in the *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, comments on the scope of this investigation).¹⁷ We did not receive any comments concerning the scope of this investigation.

IV. SCOPE OF THE INVESTIGATION

The product covered by this investigation is biodiesel from Indonesia.¹⁸

¹⁰ See Petitioner's Letter, "Biodiesel from Indonesia, Publicly Available CPO Prices," dated July 21, 2017 (Petitioner's Benchmark Information).

¹¹ See Wilmar Trading Letter, "Biodiesel from Indonesia: Submission of Benchmark Information," dated July 24, 2017 (Wilmar Trading Benchmark Information).

¹² See Petitioner's Letter, "Biodiesel from Indonesia: New Subsidy Allegation," dated July 24, 2017 (Petitioner's New Subsidy Allegation).

¹³ See Wilmar Trading Letter, "Biodiesel from Indonesia: Submission of Benchmark Rebuttal Information," dated July 31, 2017 (Wilmar Trading Benchmark Rebuttal Information).

¹⁴ See Petitioner's Letter, "Biodiesel from Indonesia: Pre-Preliminary Comments Submitted by the National Biodiesel Board Fair Trade Coalition," dated August 1, 2017.

¹⁵ See Musim Mas and Wilmar Trading Letter, "Biodiesel from Indonesia: Joint Comments of the Government of Indonesia, Wilmar and PT Musim Mas for the Preliminary Determination," dated August 11, 2017.

¹⁶ See *Postponement Notice*.

¹⁷ See *Initiation Notice* at the section, "Comments on Scope of the Investigations."

¹⁸ For a full description of the scope of this investigation, see Appendix II to the *Federal Register* notice that accompanies this memorandum.

V. INJURY TEST

Because Indonesia is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Indonesia materially injure, or threaten material injury to, a U.S. industry. On May 12, 2017, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of biodiesel from, *inter alia*, Indonesia.¹⁹

VI. NEW SUBSIDY ALLEGATION

A. Summary of Allegation

On July 24, 2017, the petitioner timely submitted an additional allegation that producers/exporters of biodiesel from Indonesia are benefitting from countervailable subsidies provided by the GOI under an additional subsidy program.²⁰ This allegation pertains to Exemptions from Import Income Tax Withholding under Article 22 of the Income Tax Law, which provides an income tax exemption for income tax withholding requirements. This allegation was timely submitted in accordance with 19 CFR 351.301(c)(2)(iv)(A).

B. Deferral of Investigation

As noted above, on July 24, 2017, the Department received timely filed new subsidy allegations. The Department has not received a request to align the date of the final determination of this investigation with the date of the final determination in the companion antidumping duty investigation, pursuant to section 705(a)(1) of the Act. Therefore, pursuant to that same section of the Act, the Department must issue a final determination in this investigation within 75 days (November 7, 2017).

Extensive resource commitments will be required to complete this investigation by November 7, 2017. Verification of questionnaire responses submitted by both company respondents and certain cross-owned affiliates, as well as the GOI, must now be completed. Prior to verification, the Department must disclose its preliminary calculations, issue supplemental questionnaires concerning the allegations already under investigation as necessary, review responses to those questionnaires, and prepare verification outlines. After verification, we will prepare verification reports, provide an opportunity for the parties to file briefs and rebuttal briefs, hold a hearing (if requested), analyze parties’ comments and prepare the final determination.

Section 351.311(c)(2) of the Department’s regulations provides that the Department may “defer consideration of the newly discovered practice, subsidy, or subsidy program until a subsequent

¹⁹ See *Biodiesel from Argentina and Indonesia; Determinations*, 82 FR 22155 (May 12, 2017) and accompanying, “Biodiesel from Argentina and Indonesia, Investigation No. 701-TA-571-572 and 731-TA-1347-1348 (Preliminary), Publication 4690, (May 2017).”

²¹ See, e.g., *Certain Frozen Warmwater Shrimp from India: Final Affirmative Countervailing Duty Determination*, 78 FR 50385 (August 19, 2013) and accompanying IDM at Comment 3.

administrative review, if any,” if Commerce “concludes that insufficient time remains before the scheduled date for the final determination . . . to examine the practice, subsidy or subsidy program.” Because of the limited time remaining to reach the final determination, we recommend deferring consideration of the new subsidy allegation described above until the first administrative review (should this investigation result in a countervailing duty order), pursuant to 19 CFR 351.311(c)(2). While we acknowledge that the allegation was timely filed under 19 CFR 351.301(d)(4)(i)(A), we do not believe that we can conduct an adequate investigation of the program within the amount of time remaining in the investigation.²¹

VII. SUBSIDIES VALUATION

A. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.²² The Department finds the AUL in this proceeding to be 10 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service’s 1977 Class Life Asset Depreciation Range System.²³ The Department notified the respondents of the 10-year AUL in the Initial Questionnaire and requested data accordingly.²⁴ No party in this proceeding disputed the allocation period.

B. Attribution of Subsidies

In accordance with 19 CFR 351.525(b)(6)(i), the Department normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provide additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to the respondent.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The preamble to the Department’s regulations further clarifies the Department’s cross-ownership standard. According to the preamble, relationships captured by the cross-ownership definition include those where:

²¹ See, e.g., *Certain Frozen Warmwater Shrimp from India: Final Affirmative Countervailing Duty Determination*, 78 FR 50385 (August 19, 2013) and accompanying IDM at Comment 3.

²² See 19 CFR 351.524(b).

²³ See U.S. Internal Revenue Service Publication 946 (2017), “How to Depreciate Property,” at Table B-2: Table of Class Lives and Recovery Periods.

²⁴ See Initial CVD Questionnaire at section II.

{T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a “golden share” may also result in cross-ownership.²⁵

Thus, the Department’s regulations make clear that the agency must look at the facts presented in each case to determine whether cross-ownership exists. The U.S. Court of International Trade (CIT) upheld the Department’s authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.²⁶

The Musim Mas Companies

Musim Mas reported that it operates palm oil plantations, refining mills, oleochemical plants, and biodiesel plants.²⁷ According to Musim Mas, its affiliated company PT Intibenua Perkasatama (Intibenua), processes palm oil products, including biodiesel.²⁸ Our examination of Musim Mas’s questionnaire responses leads us to conclude that Musim Mas and Intibenua are virtually entirely owned by Musim Mas Holdings Pte. Ltd. (Musim Mas Holdings), which is incorporated and operating in Singapore.²⁹ During the POI, Musim Mas Holdings was under the control of the Karim family.³⁰ Because Musim Mas and Intibenua were under the common control of Musim Mas Holdings and the Karim family during the POI, these two companies meet the definition of cross-ownership, as defined at 19 CFR 351.525(b)(6)(vi). As Musim Mas and Intibenua both produce biodiesel, we are attributing subsidies received by either one of these companies to the combined sales of these two companies, less inter-company sales, in accordance with 19 CFR 351.525(b)(6)(ii).

Per the Department’s request, Musim Mas also responded on behalf of 30 affiliated companies that are involved in the production of biodiesel or products that are used in the production of biodiesel, which are either wholly- or majority-owned by Musim Mas Holdings and the Karim family.³¹ As such we preliminarily find these 30 companies to be cross-owned with Musim Mas and Intibenua, in accordance with 19 CFR 351.525(b)(6)(vi). As a result, we will attribute subsidies received by any one of the 30 companies to the combined sales of the company itself and to the producers of subject merchandise (*i.e.*, Musim Mas and Intibenua), excluding inter-

²⁵ See *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*Preamble*).

²⁶ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

²⁷ See Musim Mas’s May 22, 2017 Affiliation Response (Musim Mas May 22, 2017 AFFR) at 4.

²⁸ *Id.*

²⁹ *Id.* at 3-5, and at Exhibit 1.

³⁰ *Id.* at 5.

³¹ See Musim Mas’s July 19, 2017 Second Supplemental Questionnaire Response (Musim Mas July 19, 2017 SQR).

company sales, as instructed by 19 CFR 351.525(b)(6)(iv).³² A list of these additional 30 companies can be found at Appendix 1 of this preliminary decision memorandum.

The Wilmar Trading Companies

As discussed above, we selected Wilmar Trading, an Indonesian trading company that exports subject merchandise, as a mandatory company respondent. Wilmar Trading reported that it exports biodiesel that is produced by affiliated companies: Wilmar Bioenergi Indonesia (Wilmar Bioenergi), PT Wilmar Nabati Indonesia (Wilmar Nabati), and PT Multi Nabati Sulawesi (Multi Nabati).³³ Wilmar Trading and all of the companies that provided the biodiesel that it sold during the POI are wholly owned by Wilmar International, Ltd., (Wilmar International), a multinational corporation based in Singapore.³⁴ Based on our examination of the record, we preliminarily find that Wilmar Trading is cross-owned with its biodiesel suppliers listed above, in accordance with 19 CFR 351.525(b)(6)(vi), through Wilmar International. In accordance with 19 CFR 351.525(c), we will cumulate any benefits provided to Wilmar Trading with benefits from subsidies provided to the firm that produced the subject merchandise which Wilmar Trading sold. For the reported producers of subject merchandise that supplied Wilmar Trading, we are attributing subsidies received by any one of these companies to the combined sales of these companies, excluding intercompany sales, in accordance with 19 CFR 351.525(b)(6)(ii).

Wilmar Trading has identified 33 other affiliated companies that are involved in the production, processing, and distribution of the subject merchandise, which are also wholly- or majority-owned by Wilmar International. Based on our examination of the record, we preliminarily find that these additional affiliated companies are cross-owned with Wilmar Trading and the companies that provided Wilmar Trading with the biodiesel that it sold, as defined by 19 CFR 351.525(b)(6)(vi), through the ownership and control of Wilmar International.³⁵ As a result, we will attribute subsidies received by any one of the 33 companies to the combined sales of the company itself and to the producers of subject merchandise, excluding inter-company sales, as instructed by 19 CFR 351.525(b)(6)(iv).³⁶ A list of these 33 additional companies can be found in Appendix II of this preliminary decision memorandum. Because the information leading us to preliminarily determine that these additional companies reported by Wilmar Trading are cross-owned is business proprietary in nature, our cross-ownership analysis is set forth in a separate memorandum.³⁷

³² For this preliminary determination, the Department has found that no countervailable subsidies were received by any of these 30 companies.

³³ See Wilmar Trading's May 22, 2017 Affiliation Response (Wilmar Trading May 22, 2017 AFFR).

³⁴ *Id.*

³⁵ *Id.*

³⁶ For this preliminary determination, the Department has found that no countervailable subsidies were received by any of these 33 companies with the exception of one of Wilmar Trading's input providers. See Memorandum, "Countervailing Duty Investigation of Biodiesel from Indonesia: Wilmar Trading Pte. Ltd. Preliminary Calculation Memorandum," dated concurrently with this preliminary determination memorandum (Wilmar Trading Preliminary Calculation Memorandum).

³⁷ See Wilmar Trading Preliminary Calculation Memorandum.

C. Denominators

In accordance with 19 CFR 351.525(b)(1)-(5), the Department considers the basis for the respondent's receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent's export or total sales. The denominators used to calculate the countervailable subsidy rate for the various subsidy programs described below are explained in further detail in the Preliminary Calculations Memoranda prepared for this preliminary determination.³⁸

D. Loan Benchmarks

Section 771(5)(E)(ii) of the Act provides that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." The Department's regulation at 19 CFR 351.505(a)(2)(i) states that when a loan is denominated in a foreign currency, the Department will use a benchmark denominated in the same foreign currency to calculate the relevant benefit. In addition, 19 CFR 351.505(a)(3)(i) states that when selecting a comparable commercial loan that the recipient "could actually obtain on the market," the Department will normally rely on actual loans obtained by the firm. The Department's regulations at 19 CFR 351.505(a)(2)(ii) instruct that when selecting a "commercial" loan, the Department will normally use a loan taken out by the firm from a commercial lending institution. This section of the Department's regulations also states that the Department will treat a loan from a government-owned bank as a commercial loan, unless there is evidence that the loan from a government-owned bank is provided on non-commercial terms or at the direction of the government. In addition, 19 CFR 351.505(a)(2)(ii) further stipulates that the Department will not consider a loan provided by a government-owned special purpose bank in its calculation of a benchmark interest rate.³⁹

We are examining export financing provided by the state-owned Export-Import Bank of Indonesia (Ex-Im Bank).⁴⁰ During the POI, certain Musim Mas cross-owned companies had outstanding loans that were provided by the Ex-Im Bank, in addition to loans that were provided by other banks in which the GOI maintains some level of ownership, and from commercial banks in which the GOI maintains no ownership.⁴¹ The record of this investigation does not contain evidence that the loans the Musim Mas companies received from banks in which the GOI maintains a level of ownership, other than the loans received from the Ex-Im Bank, were from special purpose policy banks or other banks acting as "authorities," that they were part of a government program, or that they are otherwise not useable under 19 CFR 351.505(a)(2)(ii). Therefore, for this preliminary determination, the Department used the interest rates from the loans Musim Mas obtained from lenders other than the Ex-Im Bank to calculate the benchmark

³⁸ See Memorandum, "Countervailing Duty Investigation of Biodiesel from Indonesia: PT Musim Mas Preliminary Calculation Memorandum," dated concurrently with this preliminary determination memorandum (Musim Mas Preliminary Calculation Memorandum); *see also* Wilmar Trading Preliminary Calculation Memorandum (collectively, Preliminary Calculations Memoranda).

³⁹ See 19 CFR 351.505(a)(2)(ii).

⁴⁰ See Initiation Checklist at 11-12.

⁴¹ See Musim Mas June 29, 2017 IQR at Exhibit 14.

interest rates for determining benefits it received from the financing provided by the Ex-Im Bank.⁴²

VIII. ANALYSIS OF PROGRAMS

A. Programs Preliminarily Determined to be Countervailable

1. Biodiesel Subsidy Fund

The GOI states that the Biodiesel Subsidy Fund (BSF) is part of the Oil Palm Plantation Fund (OPPF), which was established in 2015 by Presidential Regulation No. 61/2015 (Regulation No. 61).⁴³ According to this regulation, funds from the OPPF can be used for the development of human resources, research and development, and other aspects of palm oil production, such as food supply and biodiesel.⁴⁴ The GOI claims in its narrative response that the BSF is used to support Pertamina's (*i.e.*, the Indonesian state-owned oil and gas company) purchases of biodiesel.⁴⁵ In supporting documentation submitted by the GOI, the OPPF is described as "to ensure the sustainable development of oil palm plantation,"⁴⁶ and "for the purpose of fulfillment of Oil Palm Plantation yield for the need of food, Oil Palm Plantation downstreaming, as well provision and utilization of biodiesel type of biofuels."⁴⁷

Through this program, Pertamina, along with Corporindo, a privately-owned fuel blender, buy biodiesel from participating biodiesel producers, paying these producers the "reference index price" for petrodiesel fuel, and funds from the OPPF (through the BSF) are used to pay biodiesel producers the difference between the reference index price for petrodiesel fuel and the reference index price for biodiesel.⁴⁸ Payments to biodiesel producers are made by the "Palm Plantation Fund Management Agency" (Fund Management Agency), an "agency established by the Government for raising, administering, managing, keeping, and distributing" the OPPF.⁴⁹ According to the GOI, during the POI the monthly reference prices for biodiesel were always higher than the monthly index prices for petrodiesel fuel, and the payments from the BSF are in the amount of the difference.⁵⁰

The reference index price for petrodiesel fuel is determined by the GOI's Directorate General for Oil and Gas, usually every three months, while the reference index price for biodiesel is determined by the GOI's Directorate General of New Renewable Energy and Energy Conservation on a monthly basis.⁵¹ The reference index price for petrodiesel fuel is based on the

⁴² See Musim Mas Preliminary Calculation Memorandum.

⁴³ See GOI June 29, 2017 IQR at 13.

⁴⁴ *Id.*

⁴⁵ *Id.* PT AKR Corporindo (Corporindo) is a private-owned company that purchases biodiesel. Sales to Corporindo are also eligible for the BSF.

⁴⁶ See GOI June 29, 2017 IQR at Exhibit GOI-BSF-1, page 1.

⁴⁷ *Id.* at Exhibit GOI-BSF-1, page 11 (emphasis added).

⁴⁸ See GOI June 29, 2017 IQR at 13.

⁴⁹ *Id.* at Exhibit GOI-BSF-1, page 3.

⁵⁰ *Id.* at 14.

⁵¹ *Id.* at 13-14.

price reported in the “Means of Platts Singapore,” (*i.e.*, the average of Singapore-based oil prices published by S&P Global Platts, which provides information on energy, petrochemicals, metals, and agriculture), plus the production cost of petrodiesel in Indonesia, as estimated by the GOI, while the reference index price for biodiesel is based on the price of crude palm oil (CPO), as compiled by Kharisma Pemasaran Bersama Nusantara (a subsidiary of a state-owned plantation), plus the production cost of biodiesel.⁵² The GOI claims that the BSF is funded entirely by the export levies on CPO and its derivatives (including biodiesel), and not by any general revenues collected by the GOI.⁵³ The levy is imposed through the Minister of Finance and Presidential Proclamation, as discussed in more detail below.⁵⁴ Participation in this program is discretionary (*i.e.*, biodiesel producers do not have to sell to fuel blenders), but biodiesel producers that choose to participate must sell to Pertamina and Corporindo at the mandated price. Participation is not contingent on the payment of export levies, but both of the respondents, in fact, did contribute to the fund during the POI through the payment of export levies.⁵⁵

To receive funds for sales of biodiesel to Pertamina and Corporindo from the BSF, Indonesian biodiesel producers must send an invoice package to the GOI’s Fund Management Agency every month, which includes (but is not limited to) documents such as the tax invoice, a copy of the contract the biodiesel producer has with Pertamina, and information on the volume and type of biodiesel provided by the biodiesel producer and any transport fees.⁵⁶ The GOI’s Ministry of Energy and Mineral Resources then examine the invoice and supporting documentation, and, if there are no discrepancies, the Fund Management Agency pays biodiesel producers the difference between the reference index price for petrodiesel fuel and the reference index price for biodiesel.⁵⁷ The GOI states that eligibility for this program is limited to Indonesian biodiesel producers.⁵⁸ Musim Mas and Wilmar Trading each reported that certain of its cross-owned affiliates participated in the program and received payments from this grant program during the POI.⁵⁹

We preliminarily determine that grants from the BSF confer a countervailable subsidy. Grants from the BSF constitute a financial contribution pursuant to section 771(5)(D)(i) of the Act in the form of a direct transfer of funds, and these grants provide a benefit in the amount of the grant provided, pursuant to 19 CFR 351.504(a). Article 18(5)(a) of the GOI’s Regulation No. 61 states that entities entitled to obtain payment from the BSF must have a “valid document of business license of biodiesel type of biofuel.”⁶⁰ As such, we find that grants from the BSF are specific as a matter of law to biodiesel producers, pursuant to section 771(5A)(D)(i) of the Act.

⁵² See GOI June 29, 2017 IQR at 14 and at Exhibit GOI-BSF-3.

⁵³ *Id.*; see also GOI’s First Supplemental Questionnaire Response (GOI August 7, 2017 SQR).

⁵⁴ See GOI June 29, 2017 IQR at Exhibits GOI-CPO-5 and GOI-CPO-6.

⁵⁵ *Id.* at 19.

⁵⁶ *Id.* at 15-16.

⁵⁷ *Id.*

⁵⁸ *Id.* at 25.

⁵⁹ See Musim Mas June 29, 2017 IQR at 7-12; see also Wilmar Trading’s June 29, 2017 Initial Questionnaire Response (Wilmar Trading June 29, 2017 IQR) at 9, and at Appendix B.

⁶⁰ See GOI June 29, 2017 IQR at Exhibit GOI-BSF-1, “Regulation of President of the Republic of Indonesia Number 61 of 2015 On Oil Palm Plantation Fund Raising and Utilization,” (May 25, 2015).

With regard to the allocation of the benefit, while grants are normally treated as non-recurring, certain grants may be treated as recurring pursuant to 19 CFR 351.524(c)(2). That regulation directs the Department to consider the following when determining whether to treat a grant as recurring: whether the subsidy is an exception in the sense that the recipient can expect to receive additional subsidies under the same program on an ongoing basis from year to year; whether the subsidy requires the government's express approval; and whether the subsidy was provided for the capital structure of the recipient. Here, because the grant amount is fixed based on the amount of biodiesel sold to Pertamina and to Corporindo, we find that these grants are not exceptional and that companies can expect to receive them on an ongoing basis and in a predictable manner. The formula for determining the payment amount is established by statute/regulation, and, therefore, the administering agency does not make an express determination whether to disburse the grants.⁶¹ Rather, the application procedure solely relates to verifying the volume of biodiesel sales to the two blenders.⁶² Finally, as the grants are linked to sales, they are not provided to support the respondents' capital structure. Therefore, we are treating these grants as recurring under 19 CFR 351.524(c)(2).⁶³ Moreover, both Musim Mas and Wilmar Trading each reported the program as a recurring grant; specifically, that certain of their cross-owned affiliates participated in the program and received payments from this grant program during the POI.⁶⁴ Musim Mas and Wilmar Trading did not report the benefits received over the AUL.

The Department's regulations at section 351.525(b)(5)(i) state that, "(i)f a subsidy is tied to the production or sale of a particular product, the Secretary will attribute the subsidy only to that product." In making this determination, the Department analyzes the purpose of the subsidy based on information available at the time of bestowal.⁶⁵ A subsidy is tied only when the intended use is known to the subsidy giver (in this case, the GOI) and so acknowledged prior to or concurrent with the bestowal of the subsidy.⁶⁶ For example, in determining whether a loan is tied to a particular product, the Department examines the loan approval documents; to determine whether a grant is tied to a particular product, the Department examines the grant approval documents. In the case of grants from the BSF, the grant application and approval documents placed on the record by the GOI demonstrate that grants from this fund are paid to Indonesian biodiesel producers because of the biodiesel that they sell to Pertamina and to Corporindo through the BSF program.⁶⁷ Therefore, based on the record evidence, the purpose of this grant

⁶¹ See GOI June 29, 2017 IQR at 27-29.

⁶² *Id.*

⁶³ See, e.g., *Certain Steel Grating from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 32362 (June 8, 2010) and accompanying IDM at 16 (treating export grants as recurring because "the grant amount is fixed at a rate per dollar of exports"); see also *Final Affirmative Countervailing Duty Determination: Low Enriched Uranium from France*, 66 FR 65901 (December 21, 2001) and accompanying IDM at Comment 2, and *Preliminary Negative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Live Swine From Canada*, 69 FR 51800, 51808 (August 23, 2004).

⁶⁴ See Musim Mas June 29, 2017 IQR at 7-12; see also Wilmar Trading June 29, 2017 QR at 9, and at Appendix B.

⁶⁵ See Preamble; see also *Supercalendered Paper from Canada: Final Affirmative Countervailing Duty Determination*, 80 FR 63535 (October 20, 2015) (*Supercalendered Paper from Canada*) and accompanying IDM at 26-27.

⁶⁶ *Id.*

⁶⁷ See GOI June 29, 2017 IQR at Exhibits GOI-BSF-8 and GOI-BSF-9.

program was known and available prior to the bestowal of the benefit, and we determine that these grants are tied to the sale of biodiesel. Therefore, pursuant to 19 CFR 351.525(b)(5), we are attributing the benefits from these grants to the sales of the specific product that benefits from the grant (*i.e.*, biodiesel), rather than to the respondent companies' total sales.

To calculate the net countervailable subsidy rate, we first summed all of the grants received under this program by the company respondents during the POI, based on the date of disbursement, and then divided this amount by their respective sales of biodiesel during the POI. On this basis, we determine the net countervailable subsidy rate to be 51.97 percent *ad valorem* for Musim Mas, and 24.92 percent *ad valorem* for Wilmar Trading.⁶⁸

2. Provision of Palm Oil Feedstock for Less Than Adequate Remuneration

CPO is the key feedstock from which biodiesel is manufactured in the Indonesian biodiesel industry.⁶⁹ The petitioner claims that the "export restraint regime for palm products results in higher export taxes and levies for upstream products, such as CPO, and lower export taxes and levies for downstream products, including biodiesel."⁷⁰ According to the Trade Policy Review Body of the World Trade Organization (WTO):

Nearly half of Indonesia's trade taxes are levied on exports. The Government is making further use of export taxes, as demonstrated by the . . . introduction of export taxes on crude palm oil and cocoa. The policy objectives regarding export taxes on commodities include price stabilization, fostering the development of downstream processing facilities, and reducing the rate of depletion of non-renewable resources in mining. *According to the {GOI} authorities, export taxes on primary commodities can be used to reduce the domestic price of primary products in order to guarantee supply of intermediate inputs at below world market prices for domestic processing industries. In this way, export taxes provide an incentive for the development of domestic manufacturing or processing industries with higher value-added exports.*⁷¹

The GOI has two export tax systems in place for CPO and related products: a differential export tariff (DET) and an export levy. The DET was first implemented in 1994.⁷² Since its introduction, it has been amended a number of times. The GOI's Minister of Finance Regulation No. 75/PMK.011/2012 is the current iteration of the DET, but the related tariff schedules were updated in 2015 by the Minister of Finance Regulation No. 136/PMK.010, and in 2016 by the Minister of Finance Regulation No. 140/PMK.010/2016.⁷³ The 2015 schedule was active until the implementation of the 2016 schedule, which took effect on September 30, 2016.⁷⁴ The DET

⁶⁸ See Preliminary Calculations Memoranda.

⁶⁹ *Id.*

⁷⁰ *Id.* at 68.

⁷¹ See Volume V of the Petition at Exhibit CVD-IND-28, para. 1.13 (emphasis added).

⁷² *Id.* at 66.

⁷³ *Id.*

⁷⁴ *Id.*

effects a progressive tariff schedule on crude palm as well as 22 other products, including biodiesel (which is consistently given a lower rate than CPO).⁷⁵ Indonesian exporters pay a sliding tax linked to the GOI's reference price for CPO exports.⁷⁶ In other words, as the GOI's reference export price increases, so does the export tariff rate. Under the current DET, when the reference price drops below \$750 per metric ton (MT), the tariff rate drops to zero, but may rise as high as \$200/MT.⁷⁷ In October of 2014, the GOI's reference price for CPO dropped below \$750/MT, which dropped the tariff rate to zero.⁷⁸ From October 2014 through May 2016, the GOI's reference point stayed below \$750/MT, leading to no GOI revenue from the DET.⁷⁹ From May 2016 through the end of the POI, the GOI collected a slight tariff on CPO during three months.⁸⁰

From October 2014 until July 2015 (when the tariff rate was zero or near zero), Indonesian prices were nearly identical to world prices, and in some months Indonesian prices actually slightly exceeded world prices by as much as \$16/MT.⁸¹ In July 2015, however, the GOI imposed a new export levy of \$50/MT on all exports of CPO, in addition to the variable tax rate described above.⁸² The new levy was implemented by Minister of Finance Regulation No. 133/PMK.05/2015 on July 14, 2015.⁸³ The implementation of the export levy corresponded with a significant break between the Indonesian and world market prices of CPO.⁸⁴ For example, in eight of the months from July 2015 through the end of the POI, the differential exceeded \$150/MT.⁸⁵ Even if some portion of this differential might be attributable to freight – possibly as high as \$70/MT, domestic prices were still pushed significantly lower through the effect of the levy.⁸⁶ This divergence allowed Indonesian biodiesel producers to procure crude palm, the main feedstock for the respondents' production of biodiesel, at lower prices than would otherwise be available. In addition, while much of Indonesia's CPO production was still exported after the imposition of the export levy, domestic consumption as a percentage of domestic production rose in 2016 to 34 percent, from 27 percent in 2014 and 2015.⁸⁷

⁷⁵ *Id.* at Exhibit GOI-CPO-3.

⁷⁶ *Id.* at 66.

⁷⁷ *Id.* at 66 and Exhibit GOI-CPO-3.

⁷⁸ *Id.* at Exhibit GOI-CPO-15.

⁷⁹ *Id.*

⁸⁰ *Id.* The GOI sometimes identifies the tariff as three percent (*e.g.*, GOI's June 29, 2017 QR at 66 and 78) and sometimes as three dollars (*e.g.*, GOI's June 29, 2017 QR at Exhibit GOI-CPO-3).

⁸¹ See Petitioner's Letter, "Biodiesel from Indonesia: Pre-Preliminary Comments Submitted by the National Biodiesel Board Fair Trade Coalition," dated August 1, 2017 (Petitioner's Pre-Preliminary Comments) at Attachment 1.

⁸² See GOI June 29, 2017 IQR at 67.

⁸³ *Id.*

⁸⁴ See Petitioner's Pre-Preliminary Comments at Attachment 1.

⁸⁵ *Id.*

⁸⁶ Price data provided by the petitioner for purposes of evaluating the "differential" (Attachment I of their August 1, 2017 comments) is labeled "FOB Rotterdam," but appears to be the same CIF data submitted for purposes of measuring the benefit. Transportation data submitted by Wilmar indicates freight expenses might be as high as \$70/MT, for shipments between Rotterdam and Indonesia.

⁸⁷ See GOI June 29, 2017 IQR at 62-63. The Department has stated previously the it is not necessary for a measure to constitute a complete export ban to be countervailable. See *Supercalendered Paper* and accompanying IDM at 37 (discussing the necessity of a complete ban and also finding that the "majority of applications for export

The SAA provides guidance regarding circumstances in which the Department will find that a private party has been entrusted or directed by an “authority,” and therefore provided a financial contribution within the meaning of section 771(5)(B)(iii) of the Act. The SAA states:

In the past, the Department . . . has countervailed a variety of programs where the government has provided a benefit through private parties. (*See, e.g.,* Certain Softwood Lumber Products from Canada, Leather from Argentina, Lamb from New Zealand, Oil Country Tubular Goods from Korea, Carbon Steel Wire Rod from Spain, and Certain Steel Products from Korea). The specific manner which the government acted through the private party to provide the benefit varied wildly in the above cases. Commerce has found a countervailable subsidy to exist *where the government took or imposed (through statutory, regulatory or administrative) a formal, enforceable measure which directly led to a discernible benefit being provided to the industry under investigation.*⁸⁸

However, where there is no “direct legislation to entrust or direct private parties to provide a financial contribution,” the Department may “rely on circumstantial information to determine that there was entrustment or direction.”⁸⁹ In such a situation, following Department precedent, we employ a two-part test examining the relevant policy and practices of the foreign government.⁹⁰ Specifically, the Department looks to: (1) whether the government has in place during the relevant period a governmental policy to support that respondent; and (2) whether evidence on the record established a pattern of practices on the part of the government to act upon that policy to entrust or direct the associated private entity decisions.⁹¹

Here, we examined whether the GOI had a policy in place during the POI to support production of biodiesel or CPO derivative products, and whether the record establishes a pattern of practices on the part of the GOI to act upon that policy to entrust or direct the provision of CPO. We looked first to the laws and regulations that govern the export tax and levy. As described above, the DET is a regulatory, non-discretionary system established in 1994 implementing rate schedules during the POI issued in 2015 and 2016. Likewise, the levy was introduced in 2015 by Minister of Finance Regulation No. 133/PMK.05/2015. However, while the DET and levy are both part of a comprehensive regulatory regime, the regime does not compel any company to provide CPO to biodiesel producers, nor does it prohibit any company from exporting CPO.

We, therefore, next examined government policy. The existence of a policy to support production of biodiesel and other domestic processing industries through the guaranteed supply

exemptions” at issue in that review were approved). *See also* SAA, at 96, which explicitly contemplates countervailing export “restraints.”

⁸⁸ *See* SAA at 926.

⁸⁹ *See Supercalendered Paper* and accompanying IDM at 125 (citing *DRAMs from Korea*, and accompanying IDM at 49).

⁹⁰ *See DRAMs from Korea*, and accompanying IDM at 49. The CIT affirmed the Department’s approach in *Hynix Semiconductor, Inc. v. United States*, 391 F. Supp. 2d 1337 (CIT 2005), *aff’d after remand* 425 F. Supp. 2d 1287 (CIT 2006).

⁹¹ *Id.*

of primary commodities and inputs at below market prices is evident from the GOI's explanations of its export tax regime to the WTO Trade Policy Review Board. As noted above, the GOI has described the DET as reducing "the domestic price of primary products in order to guarantee supply of intermediate inputs at below world market prices for domestic processing industries. In this way, export taxes provide an incentive for the development of domestic manufacturing or processing industries with higher value-added exports."⁹² In other words, in the context of this case, the GOI uses private CPO producers as its instruments to guarantee supply of CPO to biodiesel producers; the export taxes are designed to ensure the private producers to play this role. The Organization for Economic Cooperation and Development reached a similar conclusion, specifically about palm oil and biodiesel: "export taxes on palm oil were imposed in Indonesia and Malaysia in order to support development of biodiesel and the cooking oil industries."⁹³ Moreover, the structure of the regime itself provides evidence of a policy concerned with CPO prices, as world prices for CPO serve as a trigger mechanism for the export tax. As explained above, the export tax rate varies based on an average of international CPO prices (the GOI's reference export price), and allowed for 12 possible rates during the POI.⁹⁴ "Higher export prices command higher tariff rates."⁹⁵ By contrast, the export tax on biodiesel ranges from zero to 7.5 percent.⁹⁶ Thus, the GOI linked the system directly to international CPO prices, and not to other concerns, such as export volumes, production levels, environmental impact, or domestic food supply. The effects on prices paid by the respondents is not incidental, but the direct and intended result as designed by the GOI through regulatory measures.

Furthermore, as also explained above, there is a discernible benefit, as demonstrated by a comparison of the "differential" between Indonesian and world market prices for CPO with and without the tax or levy in effect. The prices discussed above, compiled from data submitted by both the petitioner and the GOI, demonstrate the necessary linkage between the application of the tax and levy and the extent of the differential, lowering the price of domestic CPO consumed by Indonesian biodiesel producers and, thus, leading to a discernible benefit.⁹⁷

We note that the GOI was provided the opportunity to provide its own studies – specifically price studies – that might have demonstrated a different finding regarding the price effects of the DET and levy systems, but it did not.⁹⁸ The only information provided were the requested prices themselves and the petitioner's analysis.

⁹² See Volume V of the Petition at Exhibit CVD-IND-28, para. 1.13. In the current proceeding, the GOI has stated that it "selected the export tariff system to secure the supply of CPO for downstream industries, especially the food industry." GOI June 29, 2017 IQR at 79. To support its contention that the food industry was the focus of the restraint, the GOI cites an "earlier version" of the DET from 2011, which refers to guaranteeing "the fulfillment of raw material needs for the cooking oil industry." *Id.* at 67.

⁹³ See Volume V of the Petition at Exhibit CVD-IND-26 ("OECD Trade Policy Studies: The Economic Impact of Export Restrictions on Raw Materials") at 61.

⁹⁴ See GOI June 29, 2017 IQR at 66.

⁹⁵ *Id.*

⁹⁶ *Id.* at 83.

⁹⁷ A complete month-by-month series depicting the differential was provided by the petitioner as Attachment 1 to their August 1, 2017 comments.

⁹⁸ The GOI was asked to "[p]rovide copies of government or independent studies or analyses on which the GOI has relied to analyze the effectiveness of the export restriction in meeting the GOI's objectives." The GOI responded

Furthermore, the record establishes a pattern of practices on the part of the GOI to act upon that policy to entrust or direct the provision of CPO. The DTE was introduced in 1994, and was amended several times until the implementation of the current export tariff for CPO and its derivatives.⁹⁹ The additional levy became effective in 2015, and the GOI's assessment of the purpose of the DET from the Trade Policy Review stems from 2013. The pervasiveness of the effects of the DET and levy on lowering CPO prices is described above. Most notably, in eight of the twelve months of the POI, Indonesian CPO prices fell below world prices by more than \$100/MT, and in four months the difference exceeded \$150/MT.¹⁰⁰ Even attributing \$70/MT to differences in delivery terms, the record still demonstrates a pattern of significant differences during the POI (and before) evincing the effectiveness of the DTE and levy.¹⁰¹

Therefore, the Department preliminarily finds that the GOI entrusts or directs private parties to provide CPO, within the meaning of section 771(5)(B)(iii) of the Act, through the use of export taxes and levies that encourage those private producers to sell their products to Indonesian biodiesel producers and that have been shown to effectively keep domestic prices of CPO below world prices. Section 771(5)(B)(iii) of the Act also requires that the provision of the financial contribution would normally be vested in the government and that the practice does not differ in substance from practices normally followed by governments. The provision of a good is defined as a financial contribution under section 771(5)(D)(iii) of the Act. Therefore, the provision of a good such as CPO is a type of financial contribution normally vested in the government, and the provision of goods does not differ in substance from the practices normally followed by governments. In sum, this program confers a financial contribution, pursuant to sections 771(5)(B)(iii) and 771(5)(D)(iii) of the Act, to the Indonesian biodiesel industry.

The GOI lists 14 specific industries that use CPO, including the biodiesel industry, food industries, and chemical industries.¹⁰² Thus, the Department preliminarily finds this program to be *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act. Because only certain industries make use of CPO feedstock for the production of further processed products such as biodiesel, a limited number of enterprises and industries use this subsidy. The Department also finds that the provision of CPO for LTAR confers a benefit to the Indonesian biodiesel industry pursuant to section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a)(1), namely the difference between the benchmark world price of CPO as described below and the domestic purchases of CPO as reported by the company respondents.

With regard to benefit, under 19 CFR 351.511(a)(2), the Department measures the remuneration received by the entrusted or directed private entities for goods or services against comparable benchmark prices to determine whether the goods or services were provided for LTAR. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual

that it “does not possess any such studies or analyses.” See GOI June 29, 2017 IQR at 72. The Department also asked for copies of “any study or analysis on which the GOI relied to determine the appropriate level of the export restriction, including any analysis that quantifies the impact of the export restriction on prices, production, and the production of downstream products.” The GOI responded that “{n}o such studies or analysis exist.” *Id.* at 82.

⁹⁹ See GOI June 29, 2017 IQR at 67.

¹⁰⁰ See Petitioner's Pre-Preliminary Comments at Attachment 1.

¹⁰¹ *Id.*

¹⁰² See GOI June 29, 2017 IQR at 73-74.

transactions within the country under investigation (*e.g.*, actual sales, actual imports, or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided by our regulations, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation (*i.e.*, tier one). This is because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation.

Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative in the hierarchy.¹⁰³ The distortive effects of the DET and levy are demonstrated by the record. Indonesian CPO prices were below world market prices in each month since the imposition of the levy (including each month of the POI), and in eight of the months from the imposition of the levy through the end of the POI, the differential between Indonesian CPO prices and world market prices exceeded \$150/MT (*i.e.*, 20 percent of the \$750/MT figure the GOI considers significant in the implementation of the DET).¹⁰⁴ Thus, the Department finds that prices for sales of domestically produced product are distorted and, thus, the use of a benchmark constructed such transactions in Indonesia as outlined in 19 CFR 351.511(a)(2)(i) is precluded. Moreover, as reported by the GOI, import penetration of CPO during the POI was minimal. Specifically, during the POI, there were only 152 MT of CPO that were imported into Indonesia out of a reported 11,320,000 MT that were consumed domestically.¹⁰⁵ The Department, therefore, is using an external benchmark (*i.e.*, not internal Indonesian prices, not prices of imports into Indonesia) as described below to determine the benefit from this program, in accordance with 19 CFR 351.511(a)(2)(ii).

In its benchmark submission, Wilmar Trading included monthly prices during the POI of CPO from the Malaysia Palm Oil Board (MPOB).¹⁰⁶ Wilmar Trading also included palm oil future prices during the POI published by Bursa Malaysia Derivatives (BMD).¹⁰⁷ Additionally, Wilmar Trading submitted international freight costs for CPO reported by Riverside Tanker Chartering Limited (RTCL) and Eastport Maritime during the POI.¹⁰⁸ The Department averaged the monthly prices from MPOB and BMD, and to that average added the simple average of the applicable RTCL and Eastport Maritime freight costs. The petitioner submitted weekly CIF Rotterdam prices for CPO in 2016 that included freight.¹⁰⁹ The Department averaged the weekly Rotterdam price for CPO to create a monthly average. Finally, the Department averaged the monthly Rotterdam price for CPO with the average of the BMD and MPOB plus freight prices

¹⁰³ See *Preamble*, 63 FR at 65377.

¹⁰⁴ See Petitioner's Pre-Preliminary Comments at Attachment 1.

¹⁰⁵ *Id.* at 62.

¹⁰⁶ See Wilmar Trading Letter, "Biodiesel from Indonesia: Submission of Benchmark Information," dated July 24, 2017 at Exhibit B-1.

¹⁰⁷ *Id.* at Exhibit B-2.

¹⁰⁸ See Wilmar Trading Letter, "Biodiesel from Indonesia: Submission of Benchmark Rebuttal Information," dated July 31, 2017 at Exhibits BR-1 and BR-2.

¹⁰⁹ See Petitioner's Letter, "Biodiesel from Indonesia: Publicly Available CPO Prices," dated July 21, 2017.

and then applied the Indonesian VAT and the import tax rate to that value.¹¹⁰ We then compared these monthly benchmark prices to the company respondents' reported purchase prices for individual domestic transactions from unaffiliated companies, including VAT and delivery charges. Based on this comparison, we preliminarily determine that CPO was provided for LTAR, and that a benefit exists for the respondents in the amount of the difference between the benchmark prices and the prices paid by the respondents.¹¹¹ We divided the total benefits by the appropriate total sales denominator, as discussed in the "Subsidies Valuation Information" section above, and in the Preliminary Calculation Memoranda. On this basis, we preliminarily determine a countervailable *ad valorem* subsidy rate of 16.29 percent *ad valorem* for Musim Mas and 16.08 percent *ad valorem* for Wilmar Trading.

3. Income Tax Benefits for Listed Investments

Established in 2007 pursuant to GOI Regulation No. 1/2007, the purpose of this program is to stimulate investment and support economic growth in certain business fields and in certain geographic regions through income tax facilities.¹¹² These tax facilities include: (1) a 30 percent (*i.e.*, five percent per year for the first six years of the business's operations) tax deduction for investments in the form of tangible fixed assets; (2) accelerated depreciation and amortization; (3) a reduced tax rate on dividend distributions to non-resident taxpayers; and (4) loss compensation.¹¹³ Qualifying business fields include, "{a}gricultural based basic anorganic chemical manufacture," which includes the production of biodiesel.¹¹⁴ Musim Mas and Wilmar Trading each reported that certain of its cross-owned affiliates received tax facilities from this program during the POI.¹¹⁵ Musim Mas and Wilmar Trading reported that they both utilized the 30 percent tax reduction for investments in the form of tangible fixed assets, and Wilmar Trading also reported that it used the tax facility for accelerated depreciation.

We preliminarily determine that the tax deductions provided under this program confer a countervailable subsidy. Income tax deductions under this program provide a financial contribution in the form of revenue foregone by the government, and provide a benefit to the recipients in the amount of tax savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also preliminarily determine that the amount of the income tax deductions afforded by this program is limited as a matter of law to certain enterprises, *i.e.*, those listed in GOI Regulation No. 1/2007, and, thus, the program is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit to Musim Mas and to Wilmar Trading from this program, we treated these income tax deductions claimed by Musim Mas and Wilmar Trading as recurring benefits, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we calculated

¹¹⁰ See GOI June 29, 2017 IQR at 65.

¹¹¹ See 19 CFR 351.511(a).

¹¹² See GOI June 29, 2017 IQR at 48.

¹¹³ *Id.*

¹¹⁴ *Id.* at Exhibit GOI-ITB-3, Appendix I of GOI Regulation No. 1/2007 regarding the Income Tax Facility for Capital Investment and Certain Business Fields and Certain Regions, Certain Business Fields, at Indonesia Classification of Business Field and Sector No. 24115.

¹¹⁵ See Musim Mas June 29, 2017 IQR at 22; *see also* Wilmar Trading June 29, 2017 IQR at 23.

the amount of tax Musim Mas and Wilmar Trading would have paid absent the tax deductions. We then divided the tax savings by the appropriate sales denominator for each respondent, respectively. On this basis, we preliminarily determine a countervailable subsidy rate of 0.02 percent *ad valorem* for Musim Mas and 0.06 percent *ad valorem* for Wilmar Trading under this program.¹¹⁶

B. Program Preliminarily Determined Not to Confer a Benefit to the Respondents During the POI

1. Preferential Financing from the Export-Import Bank of Indonesia

Established under the GOI's Minister of Finance Decree of the Republic of Indonesia No. 366/KMK.06/2009, Lembaga Pembiayaan Ekspor Indonesia (*i.e.*, the Ex-Im Bank) is a special financial institution that is 100 percent owned by the GOI through its Ministry of Finance.¹¹⁷ The key activities of the Ex-Im Bank are, *inter alia*, financing, guarantees, insurance, and coaching and advisory services to financial institutions and manufacturers of goods for export. The export financing provided by the Ex-Im Bank consists of export working capital and export investment financing facilities to help customers develop the production of goods and services, and other business lines that facilitate export.¹¹⁸ Musim Mas reported that its cross-owned affiliate Intibenua obtained a working capital facility from the Ex-Im Bank during the POI.¹¹⁹ Because the Ex-Im Bank is a wholly-owned government bank that was established by the GOI to promote exports, we preliminarily find that this bank is an authority of the GOI within the meaning of section 771(5)(B) of the Act. As such, we preliminarily find that the export financing it provides constitutes a financial contribution in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act. Because financing from the Ex-Im Bank is contingent upon export performance, this financing is specific under section 771(5A)(B) of the Act. To calculate the benefit from this program, we have used the interest rate benchmarks discussed above under the section, "Subsidies Valuation." As a result of our calculation, we preliminarily determine that Musim Mas did not receive a benefit from this program during the POI.¹²⁰

Wilmar Trading reported that it did not receive export financing assistance from the Ex-Im Bank during the POI.¹²¹ Therefore, we preliminarily determine that Wilmar Trading did not receive a benefit from this program.

C. Programs Preliminarily Determined to Be Not Used by the Respondents During the POI

1. Export Insurance Provided by PT Asuransi Asei Indonesia
2. Export Guarantees Provided by PT Asuransi Asei Indonesia and Indonesia Ex-Im Bank

¹¹⁶ See Preliminary Calculations Memoranda.

¹¹⁷ See GOI June 29, 2017 IQR at 31-32.

¹¹⁸ *Id.* at 37.

¹¹⁹ See Musim Mas June 29, 2017 IQR at 14.

¹²⁰ See Musim Mas Preliminary Calculation Memorandum.

¹²¹ See Wilmar Trading June 29, 2017 IQR at 11-12.

3. Industrial Estate Subsidies
4. Pioneer Industry Tax Benefits

IX. CALCULATION OF ALL-OTHERS RATE

Sections 703(d) and 705(c)(5)(A) of the Act state that for companies not individually investigated, we will determine an all-others rate by weighting the individual company subsidy rate of each of the companies investigated by each company's exports of subject merchandise to the United States, excluding any zero or *de minimis* rates, or rates based entirely on facts available. In this investigation, the preliminary subsidy rates calculated for the two mandatory company respondents are above *de minimis* and neither was based on facts otherwise available pursuant to section 776 of the Act. However, calculating the all-others rate by using the company respondents' actual weighted-average rates risks disclosure of proprietary information. Therefore, for this preliminary determination, we calculated the all-others rate for non-selected companies by using a weighted-average of the publicly-ranged information provided by Musim Mas and Wilmar Trading for their sales of subject merchandise to the United States during the POI. As a consequence, the all-others rate is 43.93 percent *ad valorem*.¹²²

X. ITC NOTIFICATION

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making all non-privileged and non-proprietary information relating to this investigation available to the ITC. We will allow the ITC access to all privileged and business information in our files, provided that the ITC confirms that it will not disclose such information, either publicly or under an APO, without the written consent of the Assistant Secretary for Enforcement and Compliance.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

XI. DISCLOSURE AND PUBLIC COMMENT

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.¹²³ Case briefs may be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) by no later than seven days after the date on which the last verification report is issued in this proceeding. Rebuttal briefs, limited to issues raised in the case briefs, may be submitted by no later than five days after the deadline for the submission of case briefs.

¹²² See Memorandum, "Countervailing Duty Investigation of Biodiesel from Indonesia: Preliminary Determination Calculation for All-Others," dated concurrently with this preliminary decision memorandum.

¹²³ See 19 CFR 351.224(b).

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.¹²⁴ This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing must do so in writing within 30 days after the publication of this preliminary determination in the *Federal Register*.¹²⁵ Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, at a date, time and location to be determined. Parties will be notified of the date, time, and location of any hearing through ACCESS.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS.¹²⁶ Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time, on the due dates established above.¹²⁷

XII. VERIFICATION

As provided in section 782(i)(1) of the Act, we intend to verify the factual information submitted in response to the Department's questionnaires.

XIII. CONCLUSION

We recommend that you approve the preliminary findings described above.



Agree



Disagree

8/21/2017

X



Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

¹²⁴ See 19 CFR 351.309(c)(2) and 19 CFR 351.309(d)(2).

¹²⁵ See 19 CFR 351.310(c).

¹²⁶ See 19 CFR 351.303(b)(2)(i).

¹²⁷ See 19 CFR 351.303(b)(1).

Appendix I

List of Additional Companies Preliminarily Found to be Cross-Owned with Musim Mas and Intibenua

1. PT Agro Makmur Raya
2. PT Agrowiratama
3. PT Anugrah Suksesindo
4. PT Bahana Nusa Interindo
5. PT Berkat Sawit Sejati
6. PT Dunia Kaltimax Pratama
7. PT Globalindo Alam Perkasa
8. PT Guntung Idamannusa
9. PT Indokarya Internusa
10. PT Indomakmur Sawit Berjaya
11. Inter-Continental Oils & Fats Pte. Ltd.
12. PT Lestari Abadi Perkasa
13. PT Maja Primaperkasa
14. PT Maju Aneka Sawit
15. PT Megasurya Mas
16. PT Mentari Pratama
17. PT Mikie Oleo Nabati Industri
18. PT MM Petroleum
19. PT Mulia Indah
20. PT Multipersada Gatramegah
21. PT Musim Mas Fuji
22. PT Musim Mas Resources
23. PT Nusantara Mas
24. PT Saran Esa Cita
25. PT Sinar Agro Raya
26. PT Siringo-Ringo
27. PT Sukajadi Sawit Mekar
28. PT Unggul Lestari
29. PT William Resources
30. PT Wira Inno Mas

APPENDIX II

List of Additional Companies Preliminarily Found to be Cross-Owned with Wilmar Trading

1. Agro Palindo Sakti
2. Agronusa Investama
3. AMP Plantation
4. Buluh Cawang Plantations
5. Bumi Sawit Kencana
6. Bumipratama Khatulistiwa
7. Daya Labuhan Indah
8. Dharma Wungu Guna
9. Gersindo Minang Plantation
10. Karunia Kencana Permaisejati
11. Kencana Sawit Indonesia
12. Kerry Sawit
13. Mentaya Sawit Mas
14. PT Multimas Nabati Asahan
15. Murini Samsam
16. Musi Banusin Indah
17. Mustika Sembulah
18. Perkebunan Milano
19. Permata Hijau Pasaman
20. Primatama Muliajaya
21. Rimba Harapan Sakti
22. Sarana Titian Permata
23. Sentratama Niaga
24. Siak Prima Sakti
25. PT Sinar Alam Permai
26. Sinarperdana Caraka
27. Sinarsiak Dianpermai
28. Tania Selatan
29. Tradesound Investments Limited
30. Tritunggal Sentra Buana
31. Wilmar Agrindo Indah Persada
32. PT Wilmar Cahaya Indonesia Tbk
33. PT Wilmar Chemical Indonesia